Supreme Court, U.S.
FILED
AUG 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-263

IN THE

SUPREME COURT OF THE UNITED STATES

August Term, 1989

MILTON A. CALESNICK &
ELEANOR J. CALESNICK, H/W
Appellants

vs.

REDEVELOPMENT AUTHORITY OF
THE CITY OF PHILADELPHIA

and

SUPERIOR COURT OF PENNSYLVANIA
Appellees

SUPPLEMENTAL APPENDIX

MILTON A. CALESNICK &
ELEANOR J. CALESNICK
Pro Se Appellants

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SUPPLEMENTAL APPENDIX

Appendix "A" A-1

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APPENDIX "A"

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NO. 88-1834

On Appeal From The United States

District Court For The Eastern

District Of Pennsylvania

Submitted March 10, 1989

Circuit Judges

STAPLETON, GREENBERG and SCIRICA

Judgment Order

"After consideration of the contentions raised by appellants, it is ORDERED AND ADJUDGED that the judgment of the district court be and is hereby affirmed. Costs taxed against appellants."

By the Court

Circuit Judge

Clerk

Dated: Apr. 4, 1989

APPENDIX "B"

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NO. 88-1834

On Appeal From The United States

District Court For The Eastern

District Of Pennsylvania

SUR PETITION FOR REHEARING

Circuit Judges

STAPLETON, GREENBERG and SCIRICA

ORDER

The petition for rehearing filed by appellants in the above-entitled case having been submitted to the judges who participated in the decision of this court and no judge who concurred in the decision having asked for rehearing, the petition for rehearing is denied.

By the court

Circuit Judge

Dated: May 3, 1989

APPENDIX "C"

IN THE SUPERIOR COURT

OF PENNSYLVANIA

NO. 367 Phila. 1981

Appeal From The Order Of

December 9, 1980 In The

Court Of Common Pleas Of Philadelphia

County, Civil At No. 1713

September Term, 1976

Before:

WICKERSHAM, ROWLEY and WATKINS, JJ.

MEMORANDUM OPINION:

"In this case the appellants, in their pro se brief, appeal from an order of the court below which refused to rescind an agreement between the appellants and the Redevelopment Authority of the City of Philadelphia. The appellants allege that the agreement was "constructed upon fraudulent foundations, and is voidable, as a matter of law".

On December 9, 1090, the court below

entered an order which enforced a prior order of the court by directing that a deed to the premises at 130-132 Delancey Street, Philadelphia be delivered to the Redevelopment Authority of Philadelphia and filed of record.

In 1965 and 1967 appellants purchased the adjoining properties mentioned above for the purpose of restoring said premises in accordance with regulations of the Redevelopment Authority and the Redevelopment Law of the Commonwealth of Pennsylvania. In 1970, the Redevelopment Authority instituted legal actions against the appellants alleging a violation of the Redevelopment Authority agreement in that the properties were not restored within the prescribed time. During the next twelve years a series of litigations over this matter took place, several orders were issued by the court granting the appellants additional time to complete the restorations, but the restorations were never

completed in accordance with the terms of the agreement. In 1976 appellants filed an action in the Court of Common Pleas of Philadelphia County alleging fraud and seeking revestment of the title to the subject premises. On March 5, 1979 a Consent Order was executed by the court below directing that the parties produce deeds for the parcels in favor of each other, which deeds were to be held in escrow by the court pending the time set forth for completion of the restorations. If the properties were properly restored, the court would award the deeds from the Redevelopment Authority to the appellants; if the restorations did not take place, the court would award deeds to the Redevelopment Authority. Appellants failed to meet the restoration deadlines. In 1980 the Redevelopment Authority filed a motion to enforce the order of the court. After hearing, the court below awarded the properties to the Redevelopment Authority whereupon the appellants took the

instant appeal. To date, the restorations of the properties have not been completed nor have appellants provided a date for completion.

In their appeal, the appellants allege fraud on the part of the courts, the Bar Association and the Prothonotary. A review of the record demonstrates that such claims are absurd. The Redevelopment Authority properly filed its motion to enforce the previous order when appellants failed to meet their obligations under the aforesaid Consent Order. A consent judgment derives its efficacy from the agreement of the parties and sanction of the court. Thus, it binds the parties with the same force and effect which a final judgment would have after a full hearing on the merits. Baron v. Baron, 166 Pa. Superior Ct. 532, 72 A.2d 623 (1950). Simply put, the appellants have failed to comply with the consent order and, under its terms, the Redevelopment Authority is entitl-

ed to the premises in question.

Order affirmed.

APPENDIX "D"

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

NO. 88-1448

MEMORANDUM:

O'Neill, J. September 28, 1988

In this action, plaintiffs, appearing pro se, assert that have been wrongfully deprived by defendant Redevelopment Authority of title to a house and lots located at 130-132 Delancey Street, Philadelphia, and of certain building materials and construction equipment which were located at that address. They also contend that defendant Superior Court of Pennsylvania failed to review adequately and properly the issues presented in an appeal of an earlier state court proceeding involving the same properties to which they

and the Authority were parties. Defendants' actions are alleged to constitute a violation of the due process and equal protection clauses of the Fourteenth Amendment.

Precisely the same allegations were set forth by plaintiffs in previous actions in this Court against the Redevelopment Authority and the Superior Court as well as other defendants. Milton A. Calesnick and Eleanor J. Calesnick v. Redevelopment Authority of the City of Philadelphia, et al. Civil Action No. 83-0498 (E.D.Pa. July 25, 1985), 810 F.2d 1162 (3d Cir. 1987); Milton A. Calesnick and Eleanor J. Calesnick v. Commonwealth of Pennsylvania, Superior Court of Pennsylvania and Supreme Court of Pennsylvania, Civil Action No. 85-1381 (E.D.Pa. June 18, 1985).

In his exhaustive (57 pages) opinion in the Redevelopment Authority case, my colleague Judge Pollak concluded that all of

plaintiffs' claims were barred by final judgments adverse to plaintiffs rendered in various actions in the Pennsylvania courts in the years 1970 to 1984. Reference is made to his opinion for a description of the state court litigation. In the Commonwealth of Pennsylvania action, which attacked the state court judgments, Judge Pollak held that the alleged conduct of the Superior Court did not violate rights protected by the U. S. Constitution.

Since plaintiffs' claims have been the subject of final adjudication by Judge Pollak, the doctrine of res judicata bars this action. I turn now to defendants' motion for an injunction under the All Writs Act and the Authority's motion under Rule 11.

When I first met with plaintiffs and counsel, I supplied plaintiffs with a copy of Rule 11 and explained its meaning to them. I stated that if the action were withdrawn

with prejudice within the three week period fixed for the filing of their briefs in opposition to defendants' motions, the provisions of Rule 11 would not be invoked; but that if the action proceeded and were shown to be the same claim as had been presented to Judge Pollak, a Rule 11 sanction consisting of attorneys fees would be imposed. The action waw not discontinued within that period.

By Orders of May 17 and May 18, 1988, I granted the Superior Court's motion to dismiss and the Redevelopment Authority's motion for summary judgment. By Order of May 24, 1988, these orders were vacated solely in order to provide a hearing on the motions (filed prior to the Orders) for an injunction and for sanctions under Rule 11. On June 1, 1988, I denied plaintiffs' motion for a three-week continuance of the hearing date which they sought in order to prepare and file a

motion for change of venue to Washington, D.C. On June 3, 1988, plaintiffs filed a discontinuance which did not state that it was with prejudice. I denied their motion to discontinue the action.

At the scheduled hearing, on June 13, counsel for defendants appeared but plaintiffs did not. I rescheduled the hearing for June 21, 1988. At that time, all parties participated in an evidentiary hearing on the motions. Both plaintiffs were examined by counsel for the Authority. Mrs. Calesnick stated that she did not intend to institute future legal action with respect to the properties involved herein; Mr. Calesnick, however, would not agree to so refrain. He stated that he would continue to take action he deemed appropriate to protect his property and his rights.

After hearing, oral arguments and review of the briefs, and particularly after observ-

ing and listening to the oral presentations and testimony of Mr. Calesnick, I an convinced that nothing short of an injunction will prevent him from continuing to litigate the claims asserted in this action. In my view he is unwilling or unable to understand that the adverse final judgments which have been rendered in the state courts and in this court preclude further litigation of his claims with respect to the Delancey Street properties. He will continue to sue, asserting the error of the most recent adverse decision.[1]

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1. For example, paragraphs 14 and 15 of present complaint aver (with respect to Judge Pollak): "14. In a related action before the District Court For the Eastern District of Pennsylvania between these litigants, the Court accepted and utilized the Judgment and findings of the said Superior Court despite detailed explanations that the Judgment of the Superior was worthless and judicially sterile - having been developed through a constructive fraud by that Court itself.
15. In view of the distorted justice in the State Courts, and the local Federal District Court, as a result of the unlawful intrusion and influence exerted by the

> Executives of the Redevelopment Authority and of other politically influential individuals such as Judge James C. Crumlish, Jr., the Complaint will be followed by a Petition For Removal to the Federal District Court in Washington, D.C. in an effort to eliminate violations of Constitutional Rights and to free the Court from political pressures - thereby permitting the issues and facts to finally receive a fair and honest judicial review."

Plaintiffs' activities in the state courts subsequent to July 25, 1985, the date of Judge Pollak's opinion in the Redevelopment Authority case, further demonstrates the necessity for an injunction. Later that year, the Calesnicks commenced yet another action against the Redevelopment Authority, this one in Superior Court, captioned Calesnick v. Redevelopment Authority of the City of Philadelphia, et al., October Term, 1985, No. 3955, in which they again attack the state court judgments. This action was dismissed on grounds of res judicata and collateral estoppel. In 1986, the Calesnicks sought leave to file original process in the Supreme Court of Pennsylvania to make a collateral attack on the order of the Superior Court

entered on July 22, 1983. The Court denied that request.

Authority to enjoin the plaintiffs from further litigation stems from the All Writs Act, 28, U.S.C., Section 1651, which confers broad power on federal courts to control litigation and protect their jurisdiction:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usage and principles of law.

28 U.S.C. S1651(a)(1985). This Court previously has interpreted the act to provide authority for granting injunctions "where such action is necessary to prevent harassment of individuals and government officials through repeated filing of baseless complaints." Adams v. American Bar Association et al., 400 F. Supp. 219, 227 (E.D.Pa. 1975). See also Castro v. United States, 584 F. Supp. 252, 264 (D.P.R. 1984) ("Federal courts have the inherent power to enjoin litigants who use the courts as a stage for a personal vendetta of

harassment or abuse.") Thus, when, as in the present case, "it is apparent that the litigation is baseless the issuance of an injunction is proper." Adams, 400 F. Supp. at 228 (quoting Boruski v. Stewart, 381 F. Supp. 529 (S.D.N.Y. 1974).

Judicial resources are not infinite and plaintiffs' baseless litigation inevitably has postponed the resolution of claims of other litigants who as yet have had no day in Court. Therefore, I also find that a Rule 11 sanction in the form of an award of attorneys fees is both justified and necessary to penalize plaintiffs for their conduct in beginning and pursuing this action. The amount claimed by the Authority[2] is fair and reasonable and represents the fees and expenses actually incurred by it; the number of hours spent in defense was also reasonable. I will not attempt to impose an additional sanction to

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2. The Superior Court has not requested an award of fees.

penalize plaintiffs for the substantial expenditure of judicial resources in this action and in the prior two federal actions, however that factor provides additional justification for the payment of attorneys fees that I am requiring. Plaintiffs have not challenged the amount of the requested award and have not asserted that payment thereof is beyond their means.

I have tried to dispose of this action without granting an injunction or issuing sanctions. At the first meeting, I urged plaintiffs to retain counsel and took the other actions described herein (pp. 2-3). At the most recent hearing, with the consent of defendants, I talked privately but on the record to plaintiffs in an unsuccessful attempt to get them to discontinue the action. At the same hearing Mr. Calesnick was given the opportunity to affirm that he would bring no additional actions but he declined to do so. I believe I have no other course open to me except to

issue an injunction and to impose a financial sanction. In my view, both are necessary to prevent future suits; and the award of attorneys fees is necessary to remedy the flagrant violation of Rule 11.